IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Criminal No. 2-20165**
	)	
RICHARD TITTERINGTON, ET AL,	)	
	)	
Defendants.	)	

ORDER DENYING THE UNITED STATES' MOTION TO RECONSIDER

This matter is before the Court on the motion of the United States to reconsider this Court's April 22, 2003 Order Granting Defendants' Motions to Dismiss the Indictment (hereinafter "April 22 Order"). The United States seeks reconsideration of the April 22 Order because it believes that the Indictment includes facts establishing that the alleged offenses occurred within the applicable statute of limitations period. The United States also avers that "[a] case which is strikingly similar to the instant matter," United States v. Wilson, 249 F.3d 366 (5th Cir. 2001), supports the government's position. For the following reasons, the Court DENIES the United States' motion to reconsider the April 22 Order.

I. Discussion

A. Applicable Legal Standard

The Federal Rules of Criminal Procedure make no provision for a motion to reconsider. Courts adjudicating motions to reconsider in criminal cases typically evaluate such motions under the same standards applicable to a civil motion to alter or amend judgment pursuant to Fed. R. Civ.

P. 59(e). See, e.g., United States v. Sims, No. CR. 00-193 MV, 2003 WL 1227571 at *4 (D. N.M. March 11, 2003); United States v. Thompson, 125 F. Supp. 2d 1297 (D. Kan. 2000). A motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) may be made for one of three reasons:

1) An intervening change of controlling law;

2) Evidence not previously available has become available; or

3) It is necessary to correct a clear error of law or prevent manifest injustice.

Fed. R. Civ. P. 59(e); Helton v. ACS Group, 964 F. Supp. 1175, 1182 (E.D. Tenn. 1997). Rule 59(e) is not intended to be used to "relitigate issues previously considered" or to "submit evidence which in the exercise of reasonable diligence, could have been submitted before." Id. at 1182; see also Voelkel v. Gen. Motors Corp., 846 F. Supp. 1482, 1483 (D. Kan.), aff'd, 43 F.3d 1484 (10th Cir. 1994) (stating that a motion for reconsideration "is not a second chance for the losing party to make its strongest case or to dress up arguments that previously failed."). When a movant offers "essentially the same arguments presented on the original motion, the proper vehicle for relief is an appeal." Id. at 1182 (citing Keweenaw Bay Indian Community v. State of Michigan, 152 F.R.D. 562, 563 (W.D. Mich. 1992), aff'd, 11 F.3d 1341 (6th Cir. 1993)). Thus, there are limited circumstances in which a court may grant a motion for reconsideration. In fact, the Supreme Court stated that Congress' intent in adopting Fed. R. Civ. P. 59(e) "had a clear and narrow aim." White v. N.H. Dept. of Employment Sec., 455 U.S. 445, 450, 102 S. Ct. 1162, 71 L. Ed. 2d 325 (1982). The aim was to empower district courts "to rectify [their] own mistakes in the period immediately following the entry of judgment." Id. at 450; Treckiak v. State of Ohio, 117 F.3d 1421 (6th Cir. 1997) (unpublished opinion); Windsor v. Fed. Executive Agency, 614 F. Supp. 1255, 1264 (M.D. Tenn. 1984).

B. Analysis

The government does not allege in its motion that the April 22 Order is invalid because a change in controlling law has occurred or evidence not previously available has become available. Therefore, the Court can only reconsider the April 22 Order if doing so is "necessary to correct a clear error of law or prevent manifest injustice." Fed. R. Civ. P. 59(e). The government has not established either a clear error of law[1] or manifest injustice in the April 22 Order. Instead, the government rests its entire motion for reconsideration on its statement that "[t]he applicable limitations period for the offenses charged in the indictment is eight (8) years, not five (5) years, and specific facts, including the dates of each of the offenses occurring within the eight (8) year period, are set forth in the Indictment." Mot. for Recons. at 2. This assertion, which contests the Court's application of applicable law to the facts in this case, does not

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[1] It is unclear whether the United States disputes the Court's application of United States v. Crossley, 224 F.3d 847 (6th Cir. 2000). On page six of its brief, the government "does not dispute" the statement in the April 22 Order that Crossley "'confirmed that the statute of limitations constitutes an absolute bar to prosecution, absent explicit waiver by a defendant.'" Mot. for Recons. at 6 (quoting April 22 Order at 5). Conversely, on page seven of its brief, the government contends that Crossley supports its position that the "statute of limitations is an affirmative defense." Id. at 7. The Court need not reconcile these antithetical statements, however, because the government's latter contention is legally inaccurate: Crossley expressly rejected construing the statute of limitations as an affirmative offense, instead making it a jurisdictional bar. Crossley, 224 F.3d at 858. Although the narrow issue in Crossley dealt with whether or not the statute of limitations was waivable, the clear holding of the Sixth Circuit applies to the nature of the statute of limitations in general and therefore easily encompasses the issue at bar in this case. See id. at 858 ("[We] hold that, absent an explicit waiver, the statute of limitations presents a bar to prosecution that may be raised for the first time on appeal.").

Additionally, the Court rejects any suggestion by the United States that United States v. Wilson depicts the applicable law in the instant action. Wilson is inapposite because, as made clear in the April 22 Order, only the Sixth and Tenth Circuits treat the statute of limitations as a jurisdictional bar, whereas the Fifth Circuit–and all other Circuits–treat the statute of limitations as an affirmative defense that need not be anticipated in the indictment. See April 22 Order at 6; see generally McKelvey v. United States, 260 U.S. 353 (1922); Crossley, 224 F.3d at 858.

constitute grounds for reconsideration under Fed. R. Civ. P. 59(e) and must therefore be rejected. Indeed, the United States' motion to reconsider "is nothing but a request for the court to revisit the same issues previously rejected." United States v. West, No. 01-40122-01, 2002 WL 1334870 at *1 (D. Kan. May 9, 2002).

Moreover, even if the government's motion was proper, the Court must reject it on the merits. The normal statute of limitations for the offenses charged in the indictment is five years. See April 22 Order. Nothing within the four corners of the indictment states, or even suggests, that anything other than the normal statute of limitations should apply. To determine the facial validity of an indictment, the Court is confined to the four corners of the indictment. See United States v. Sampson, 371 U.S. 75, 78-79, 83 S. Ct. 173, 9 L. Ed. 2d 136 (1962); United States v. Marra, 481 F.2d 1196, 1199 (6th Cir. 1973). The facts giving rise to the offenses charged in the indictment against Defendants all occurred after the five year statute of limitations period concluded. Failure to allege facts in an indictment occurring within the applicable statute of limitations "presents a bar to prosecution." Crossley, 224 F.3d at 858. Accordingly, regardless of whether the Court properly granted the United States an extension of the statute of limitations, the United States erred in failing to mention this extension within the four corners of the indictment and is therefore barred from prosecuting Defendants under the current defective indictment. Only the government, not the Court, can cure this error by seeking a superceding indictment including mention of the tolling of the statute of limitations pursuant to 18 U.S.C. § 3292.

II. Conclusions

For the above-stated reasons, the United States' motion to reconsider dismissal of the

indictment is **DENIED**. The Court's May 5, 2003 temporary stay of the April 22 Order dismissing the indictment shall remain in effect until thirty (30) days following entry of this Order.

IT IS SO ORDERED this _____ day of _____ 2003.

BERNICE BOUIE DONALD
United States District Judge